

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHANDRA KISHOR,

Plaintiff,

No. CIV S-02-1632 FCD JFM P

vs.

DR. GERAGHTY, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. This action was dismissed on July 6, 2005, and judgment was entered on the same day. On August 23, 2005, plaintiff filed a notice of appeal from the judgment.¹ On August 24, 2005, plaintiff's appeal was processed to the United States Court of Appeals for the Ninth Circuit. On the same day, defendant James P. Drennan, M.D. filed document styled as an "Objection and Motion to Strike Plaintiff's Notice of Appeal." Defendant Drennan requests that the notice of appeal be stricken as untimely.

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¹ On August 18, 2005, plaintiff filed a document styled "Petition for Issuance of Certificate of Probable Cause on Appeal from Order Denying Writ of Habeas Corpus." A certificate of appealability, which has replaced the former certificate of probable cause, is not required in this civil rights action.

1 As noted above, plaintiff's notice of appeal has been processed to the court of
2 appeals. Good cause appearing, defendant Drennan's motion will be denied without prejudice to
3 his right to file an appropriate motion in the court of appeals.

4 In accordance with the above, IT IS HEREBY ORDERED that:

5 1. Defendant Drennan's August 24, 2005 motion to strike plaintiff's motion of
6 appeal is denied without prejudice; and

7 2. The Clerk of the Court is directed to serve a copy of this order on the United
8 States Court of Appeals for the Ninth Circuit.

9 DATED: September 7, 2005.

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12 UNITED STATES MAGISTRATE JUDGE

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